IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21-06-2005

Coram:

THE HONOURABLE MR. JUSTICE M.KARPAGAVINAYAGAM
and
THE HONOURABLE MR. JUSTICE C.NAGAPPAN

Writ Appeal No.3816 of 2003
and
W.A.M.P.Nos.6231 and 6232 of 2003

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1. K.Padmavathi
2. P.Sivaraj
3. S.Shanmugam .. Appellants

Vs.

1.The Corporation of Coimbatore,
rep. by its Commissioner,
Coimbatore.

2.The Asst. Commissioner (West Zone),
Corporation of Coimbatore,
Coimbatore - 641 002.

3.Ramani

4.Natarajan

5.Iyyappan .. Respondents

Writ Appeal filed against the order dated 22.9.2003 passed by the learned single Judge in W.P.No.12892 of 2002.

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For Appellants : Mr.T.P.Manoharan

For Respondents
1 and 2 : Mr.N.R.Chandran, A.G. for
Mr.J.Sathya Narayana Prasad
For Respondents :Mr.A.L.Somayaji, S.C. for
4 and 5 Mr.M.A.P.Thangavel

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JUDGMENT

M.KARPAGAVINAYAGAM, J.

The writ petitioners are the appellants herein. They filed a Writ of Mandamus directing the respondents 1 to 3, the Commissioner of Corporation and Corporation officials to allot the 144 newly constructed open shops in the public market, viz., Panneerselvam Market, Coimbatore either by way of lease or licence or on payment of daily sungam only in accordance with law and procedures prescribed therefor, instead of, arbitrarily allotting to the men and agents of the respondents 4 and 5, the individuals.

2. The short facts leading to the filing of the writ petition are as follows:

"(a) Panneerselvam Public Market in Coimbatore is belonging to the Corporation of Coimbatore, the first respondent herein. It consists of 34 permanent shops including 12 Mutton Stalls and 5 Provision Stores. There is also a vast open area in front of the shops.

(b) In accordance with the Bye-laws, the Corporation has been leasing out 34 permanent shops through Tender-cum-Public Auction on annual lease. In the open area, poor and small traders are permitted to bring their articles in baskets and do business on temporary and daily wages by collecting sungam from them every day. The appellants also have been doing the business as small traders. Consequently, totally about 800 to 1000 small traders have been doing business every day and earning their livelihood.

(c) Natarajan and Iyyappan, the fourth and fifth respondents are the unruly elements in the area and they are having permanent shops in the public market on lease. They wanted to have control over the entire market. Using their muscle power, they began to put up structures in the open area and gave the same to their men and agents on permanent basis by collecting 'Pagadies' and 'Daily Mamool'. In the process, they had taken full control of the public market and completely prevented the poor small traders to enter into the open area and carry on business therein. Thus, the Corporation was prevented from implementing the Bye-laws.

(d) At that point of time, some of the small traders in order to retrieve the public market from their control, filed a suit in O.S.No.467 of 2000 against the individuals, praying for permanent injunction restraining them from any way interfering with the small traders right to do business on payment of sungam in the open area

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in the public market. The trial Court granted interim injunction to that effect.

(e) In compliance with the said order, the Corporation, the first respondent herein had retrieved the public market from the control of the respondents 4 and 5 and removed the illegal structures put up by them and consequently, the small traders including the appellants were permitted to carry on business in the open area on daily basis on payment of sungam. Thereafter, the interim injunction originally granted was made absolute after hearing the counsel for Corporation.

(f) When the injunction was in force, the Corporation began to construct 144 open portions/shops with Asbestos roofs in the open area. The first respondent decided to treat those 144 portions as open shops and to lease out the same to 144 persons on permanent basis as per Bye-laws.

(g) It can be done only through Tender-cum-Public Auction as it is being done in respect of the 34 permanent shops. Further, as per G.O.Ms.No.147 M.A. & W.S.Dept., dated 30.12.2000 issued by the Government of Tamil Nadu, the Corporation, the first respondent herein, should transfer those open shops by way of lease only through public auction. In pursuance of the decision, the first respondent Corporation Commissioner has also issued Public Auction and Tender Notice on 7.8.2002 for leasing out the 144 new open shops.

(h) At that stage, to circumvent the above position of law, the respondents 4 and 5, the individuals who have got the muscle power, colluded with the other officials to adopt a "Backdoor Method" to get all the 144 open shops allotted to the men and agents of the 4th and 5 the respondents. Accordingly, the respondents 4 and 5 prepared a list of 144 persons who were their men and collected the amounts from them. The third respondent Assistant Commissioner of Corporation also has recommended for allotment through the "Back-Door Method", even though this can be done by the public auction as per the Bye-laws and the G.Os.

(i) Admittedly, the suit was pending in which permanent injunction was in force. At that stage, the appellants filed the present W.P.No.12892 of 2002 praying for a Writ of Mandamus directing the respondents 1 to 3, the Corporation officials to allot the 144 newly constructed open shops in the public market either by way of lease or licence or on payment of daily sungam only in accordance with law and procedures, instead of allotting to the men and agents of the respondents 4 and 5.”

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3. According to the respondents 1 and 2, the officials, the temporary shops were constructed after observing all the formalities. Before construction, the premises were occupied by the members of the Association,by name Kovai Malar Viyabarigal Sangam. Before vacating them from the premises, the Association gave applications numbering 144 requesting for allotment of shops after completing the construction. After receipt of those applications, these persons were asked to shift to the nearby Corporation Elementary School playground. After the construction was over, out of 144, 128 shops were allotted to them. As such, the allotment cannot be said to be wrong. Therefore, the writ petition is liable to be dismissed as not sustainable in law and on facts.

4. According to the respondents 4 and 5, they are the office-bearers of the Kovai Flower Merchant's Association. Only on the assurance given by the Corporation, the members of the Association vacated the premises and on their request, the same were re-allotted.

5. After considering the respective submissions made by the counsel for the parties, the learned single Judge allowed the writ petition holding that the Corporation must follow the rules and they shall not auction the newly constructed shops in favour of the respondents 4 and 5 and as such, the Corporation shall let out either by way of licence or by auction the said shops only in accordance with the rules and they cannot violate the rules.

6. The learned single Judge having said so, observed in the last paragraph that 144 persons who were carrying on business in the public market are entitled to preferential treatment; therefore, all those persons who were carrying on business in that place before they were shifted shall be given preference and that Only the shops in excess, if any, can be allotted to others, who may be new entrants to get licence. With these observations, the writ petition was disposed of.

7. Thus, the writ petitioners even though they were able to get the writ petition allowed, aggrieved over the observation made by the learned single Judge that 144 persons who were said to be doing business in the open area must be given preference, have approached this Court as they felt that these two type of directions given by the learned single Judge are mutually destructive of each other. Hence, this writ appeal.

8. We have heard Mr.T.P. Manoharan, the learned counsel for the appellants, Mr.N.R.Chandran, the learned Advocate General representing Mr.J.Sathya Narayana Prasad, the learned counsel for the respondents 1 and 2 and Mr.A.L.Somayaji, the learned senior counsel appearing for the respondents 4 and 5, who argued at length

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elaborating their respective pleas. We have given our meticulous consideration to the respective submissions.

9. At the outset, it shall be stated that the learned single Judge having allowed the writ petition by giving a Mandamus directing the authorities concerned to conduct public auction with reference to the allotment of 144 shops in accordance with the procedure, strangely has given a further direction that 144 persons who occupied earlier should be given preference as they are entitled to preferential treatment and if any vacant space is available subsequent to the allotment of the shops, the other persons can be permitted to occupy the same to carry on business.

10. The learned single Judge after having considered the prayer, affidavit and counter-affidavits of the parties, thought it fit to allow the writ petition by issuing a Writ of Mandamus as prayed for. The crux of the Mandamus is that allotment has to be made only as per the procedure contemplated under public auction. If that being so, there is no reason as to why the learned single Judge has given a direction to the first respondent Corporation, Coimbatore to give preference to the 144 persons who were stated to have occupied the place earlier by giving preferential treatment. This means, the second direction directing the first respondent to allot 144 shops to 144 persons is in direct conflict with the first direction. To elaborate this aspect, it would be worthwhile to refer to the actual prayer made by the petitioners/appellants in the writ petition.

11. The petitioners filed the writ petition representing the small traders having their daily business in the Coimbatore Panneerselvam Open Market. Since there was a disturbance at the hands of the respondents 4 and 5, the alleged unruly elements with the collusion of the respondents 1 to 3, the Corporation officials, by not permitting the small traders to carry on their business in the open space, they made a prayer in the writ petition in W.P.No.12892 of 2002 which is as follows:

> "For the reasons stated in the accompanying affidavit, the petitioner pray that this Hon'ble Court may be pleased to issue a writ in the nature of writ of Mandamus or any other appropriate writ, direction or order, directing the respondents 1 to 3, namely, the Corporation officials, to allot the 144 newly constructed open shops in the Public Market, viz., Panneerselvam Market, Coimbatore either by way of lease or licence or on payment of daily sungam only in accordance with law and procedure prescribed therefor, instead of, arbitrarily allotting to the men and agents of the respondents 3 to 5 alone and to pass such further or other order or orders that this Hon'ble Court may deem fit and proper in the circumstances of the case and render justice."

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12. According to the petitioners, as per the affidavit before the learned single Judge and also through the typed set, the petitioners and others as poor small traders have been permitted to bring their articles in baskets and do business on temporary and daily basis in the open space at the Panneerselvam Market by collecting sungam every day. Already there were 34 permanent shops situated inside the market. These shops were leased out through Tender-cum- Public Auction on annual lease. The respondents 4 and 5 though obtained two permanent shops in the public market on lease, they being unruly elements, by using their muscle power, put up structures in the open area and began to give the same to their men and agents by collecting 'Pagadies' and 'Daily Mamools', thus prevented these small traders like the petitioners from carrying on their daily business. In the said process, the entire open space in front of the market was in full control of the respondents 4 and 5. To retrieve the public market from the hands of the respondents 4 and 5, some small traders who were affected like the petitioners filed a suit against both the officials and the respondents 4 and 5 praying for permanent injunction and obtained interim injunction. On the strength of the interim injunction, the illegal structures put up by the respondents 4 and 5 were removed and the small traders were permitted to carry on business in the open area on daily basis on payment of sungam. The interim injunction was made absolute after hearing the respondents. At that stage, the first respondent, despite the pendency of the suit and the injunction order being in force, with collusion of the other respondents, put up Asbestos roofs over the open area of the public market and converted the same into 144 open portions/shops.

13. As per G.O.Ms.No.147 dated 30.7.2000, the first respondent Corporation could allot the shops only by way of lease or licence through the public auction. The first respondent also issued Public Auction and Tender Notice dated 7.8.2002 for leasing out the 144 newly constructed open shops. Somehow or the other to circumvent the above public auction, the respondents 3 to 5 colluded with the respondents 1 and 2 to adopt a "Backdoor Method" and prepared a list of 144 persons, who are the men and agents of the respondents 4 and 5 and openly began to declare that the open shops will be allotted on lease only to the 144 persons suggested by the respondents 4 and 5.

14. In order to prevent the entry of 144 persons at the instance of the respondents 4 and 5 through "Backdoor Method" and in order to make the first respondent to follow the procedures by conducting public auction as per the Tender Notice dated 7.8.2002, the petitioners filed the writ petition seeking for a Mandamus. The learned single Judge on hearing the counsel for the parties and also perusal of the records gave the relief to the prayer sought for by the petitioners with regard to Mandamus. Virtually, the

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said order has been passed by the learned single Judge accepting the case of the petitioners. The relevant portion of the order is as follows:

> "The prayer of the petitioner is that the Corporation must follow the Rules; violating the Rules, they shall not auction the newly constructed shops in favour of respondents 4 and 5. In so far as this aspect is concerned, there cannot be any difference of opinion. The Corporation shall let out either by way of licence or by auction only in accordance with the Rules and they cannot violate the Rules. In so far as the prayer is concerned, the writ of mandamus is allowed."

15. The reading of the above paragraph would indicate that the learned single Judge has given a specific direction that the Corporation shall let out either by way of licence or by auction only in accordance with law and they cannot violate the rules. This direction would clearly indicate that there should not be any allotment to any person much less than the persons recommended by the respondents 4 and 5 without conducting auction. At the same breath, in paragraph 10, the learned single Judge has given a further direction which would be detrimental to his first direction to make allotment to the 144 persons who were said to have conducted the business earlier before construction of the 144 shops. The relevant portion of the observation is as follows:

> "Admittedly, in this market there were number of vendors carrying on business in flowers for years together. From the affidavit filed by respondents 1 and 2, it is seen that only after enumerating the merchants, who were carrying on business, they were given alternative spot and they are presently carrying on business in that place temporarily. Therefore, those persons, who were enumerated already and found to have been carrying on business already in the market, cannot be deprived of their rights. ..... All these persons who were carrying on business in that place before they were shifted shall be given a place first. Only the shops in excess, if any can be allotted to others, who may be new aspirants to get licence. If the petitioners proved their case that they were carrying on business earlier, prior to the date when they were shifted, they will also be entitled to such treatment preferential treatment. Otherwise, the petitioners and all the others, who may apply for licence to carry on business, may be treated on par. They can be granted licence with respect to the remaining excess shops only."

16. By virtue of this direction, there is no necessity to issue fresh licence or to conduct public auction. There is no reason given in the impugned order by the learned single Judge as to why the Writ of Mandamus as sought for issued by him in paragraph 9 has to be diluted by giving another direction that

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there need not be any public auction in regard to the 144 persons who were said to be occupying the said portions earlier. It is unfortunate that the learned single Judge failed to notice that the petitioners have never admitted that the said 144 persons have actually occupied the shops before the construction. Therefore, the second direction which is quite contradictory to the first direction is merely based upon the affidavit filed by the respondents. As such, this second direction as mentioned in paragraph 10 would not stand, especially when the conclusion by the learned single Judge that the petitioners are entitled for Mandamus.

17. This aspect of the matter could be looked into from yet another angle. There is no dispute in the fact that under G.O.Ms.No.147 dated 30.7.2000, the leasing of the shops or open shops or immovable property of all the urban Local Bodies shall be decided in the public auction for the first time and after expiry of the period, it is for the Local Bodies either to continue the period of lease in favour of the existing lessees or to conduct fresh public auction.

18. According to the counter-affidavit filed by the respondents 1 and 2, namely by the Commissioner of the Coimbatore Municipal Corporation, the Panneerselvam Market, particularly in the portion which has now been reconstructed, originally did not have the proper amenities and proper structures. Since there was open space in front of the market, it was proposed to provide proper structures with platforms for the benefit of the vendors. For the said purpose, the vendors who were generally in occupation of the market were asked to shift to nearby Corporation Elementary School playground. Thereafter, the Corporation constructed temporary sheds after observing all the formalities. Before vacating the premises, an Association by name Kovai Malar Viyabarigal Sangam had given applications from its members numbering 144 who were said to be doing business regularly in the market requesting for allotment of shops after completing the construction work. Accordingly, after the construction was over, the Corporation decided to allot the 144 shops in the name of 144 persons who have earlier occupied.

19. According to the counter-affidavit of the fourth respondent A.N.Natarajan, he is one of the office-bearers of Kovai Malar Viyabarigal Munnetra Sangam and there are more than 400 members in the Sangam. The fourth respondent is the President of the Committee consisting of 40 members and the fifth respondent is the Treasurer of the Sangam. The fourth respondent being one of the flower vendors by profession is in occupation of one shop in the open space. Originally, the members of the Sangam who occupied the open space were asked by the Corporation to shift their

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business to nearby Corporation School ground temporarily in order to put up Asbestos roof to provide 144 flower vending stalls at Panneerselvam Flower Market, in the open space. At that time, an assurance was given to the members of the Sangam for reallotmentin the newly put up roof top market at Panneerselvam Flower Market. Accordingly, the 144 flower vendors have been permitted to occupy the newly constructed shops.

20. So, the reading of both the counter-affidavits filed on behalf of the respondents 1 and 2 and on behalf of the respondents 4 and 5 would indicate that their stand before the learned single Judge is that the fourth respondent was the President of the Sangam and all the 144 persons have occupied the open space for carrying on their business and since the construction was proposed to be made with Asbestos roof, they were given assurance for re-allotment and on that basis, they shifted from that place to Corporation School playground and thereafter, after the construction, the same thing was re-allotted.

21. The above statement made by both the respondents through two counter-affidavits would indicate that there is a conspicuous silence with reference to the particulars of the allotment by the Corporation to 144 persons originally made in their favour. As indicated above, there is G.O.Ms.No.147 dated 30.7.2000. By virtue of the said G.O., the open shops shall be allotted to the persons concerned only in accordance with law through public auction. As clearly mentioned in G.O.Ms.No.147, when the allotment is made for the first time, it must be through public auction. Of course, the Local Body has got discretion to continue the period even after expiry of the lease period, if so desired.

22. Admittedly, it is not the stand of the respondents 1 and 2 that either Sangam or members of the Sangam, namely 144 persons were permitted to occupy the open space either by way of lease or by licence through public auction. The only stand taken by the respondents is that they had earlier occupied the open space and done the business and they were asked to shift their business to nearby area so that the Corporation would construct new structures and re-allot them to those persons. The learned single Judge has miserably failed to take into consideration whether such alleged occupation by the 144 persons was permitted by the Corporation in accordance with the rules and regulations contained in the Bye-laws.

23. As stated above, it cannot be debated that as per the Bye-laws and the G.Os. relating to the lease and licence, the Local Bodies should do the same only through public auction. When it is not established that those persons were the permitted occupants as

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per the legal permission by the Corporation and when it is the stand of the respondents that they were permitted to occupy after the construction only on the basis of the assurance given by the Corporation even before vacating them from that place, it is not proper for the learned single Judge to issue such a direction that the authorities should give preferential treatment to the 144 persons by making allotment in their names.

24. In this context, it is important to note that the very same authority, namely the first respondent Corporation chose to issue the Auction Notice on 7.8.2002 with reference to the right to collection of the charges at Panneerselvam Market and with reference to the allotment of 144 shops constructed in the open market. When such is the stand taken by the Corporation through the Auction Notice which was issued on 7.8.2002 to conduct public auction as per the G.O.Ms.No.147 dated 30.7.2000, how can they now take a different stand that the 144 shops could be allotted to the 144 persons who occupied earlier, who were not admittedly selected through the public auction.

25. In M/S. KASTURI LAL v. STATE OF J. & K. (A.I.R.1980 S.C.1992), the Supreme Court would hold as follows:

> "Where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or granting other forms of largess, the Government cannot act arbitrarily at its sweet will. There are two limitations imposed by law which structure and control the discretion of the Government in this behalf. The first is in regard to the terms on which largess may be granted and the other, is in regard to the persons who may be recipients of such largess. Unlike a private individual, the State cannot act as it pleases in the matter of giving largess and it cannot choose to deal with any person it pleases in its absolute and unfettered discretion."

26. Following the above principles, the Supreme Court in various decisions held that contracts by the State, its Corporations, instrumentalities and agencies must be normally granted through public-auction/public tender by inviting tenders from eligible persons; the notification of the public-auction or inviting tenders should be advertised in well-known dailies having wide circulation in the locality; the award of Corporation contracts through public auction is to ensure transparency in the public procurement and that this is done mainly to provide for fair and equitable treatment of all tenderers, and to eliminate irregularities.

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27. Where a Corporation is an instrumentality or agency of Government, it would, in the exercise of its power or discretion, be subject to the same constitutional or public law limitations as Government. The rule inhibiting arbitrary auction by Government must apply equally where such Corporation is dealing with the public, whether by way of giving jobs or entering into contracts or otherwise.

28. In other words, State owned or public owned property is not to be dealt with at the absolute discretion of the executive. Public interest is the paramount consideration. The auctions of the State agencies should be legitimate. Their dealings should be above board. Their transactions should be without aversion or affection. Nothing should be suggestive of discrimination. Nothing should be done by them which gives an impression of bias, favouritism or nepotism. Ordinarily, these factors would be absent if the matter is brought to public auction.

29. These guidelines have been laid down in the decisions in S.SELVARANI v. THE COMMISSIONER, KARAIKUDI MUNICIPALITY AND ANOTHER (2005 Writ.L.R.30), R.D.SHETTY v. INTERNATIONAL AIRPORT AUTHORITY OF INDIA (A.I.R.1979 S.C.1628) and SACHIDANAND PANDY v. STATE OF WEST BENGAL (A.I.R.1987 S.C.1109)

30. Thus, law is very clear that ordinarily all contracts by the Government or by an instrumentality of the State, namely Corporation should be granted only by public auction or by inviting tenders, after advertising the same in well known newspapers having wide circulation, so that all eligible persons will have opportunity to bid in the same.

31. Only in pursuance of the principles laid down by the Supreme Court taking note of the Article 14 of the Constitution of India, as indicated above, G.O.Ms.No.147 has been issued on 30.7.2000. Only on the strength of this G.O., the public notice also had been issued by the Corporation on 7.8.2002 in this case inviting the tenders for two items, namely right to collect the charges at Panneerselvam Market and regarding occupation of 144 shops constructed in the open space.

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32. Having chosen to follow the procedure, there is no reason for the Corporation to shift from the procedure and then decided to allot 144 shops in the name of 144 persons who claimed to be the members of the Kovai Malar Viyabarigal Sangam controlled by the respondents 4 and 5 on the ground that they had occupied earlier. Without considering this aspect, the learned single Judge has directed the Corporation, the first respondent to allot the shops to the 144 persons first and if there is excess, they can consider

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for others. This, in our view, the learned single Judge has miserably lost the last thread of the core of the issue and issued such a direction which is quite contradictory to his own first direction by which the writ petition was allowed issuing a Mandamus.

33. Yet another aspect is to be noticed. The respondents 4 and 5 admittedly obtained two permanent shops in the public market on lease. According to the writ petitioners, taking advantage of the same, the respondents 4 and 5 being the unruly elements used their muscle power in connivance with the officials and put up structures in the open area in the public market and prevented the poor innocent small traders from entering into the same and carrying on business on daily basis as per Bye-laws.

34. On being aggrieved over this, some of the small vendors, who are similarly placed with that of the writ petitioners, when they were prevented from conducting their business daily by occupying the open space by the respondents 4 and 5, who had taken full control of the public market from the Corporation in order to retrieve the same from their control, in their representative capacity, filed a suit in O.S.No.467 of 2000 before the Court of the Principal District Munsif, Coimbatore, against the very same respondents herein, praying for permanent injunction restraining them from anyway disturbing with the small traders' right to do business on payment of sungam in the open area in the public market.

35. Admittedly, the suit is in relation to the same place in the public market which is the subject matter before this Court. Pending the suit, the plaintiffs filed I.A.No.467 of 2000 seeking for interim injunction. On consideration of the facts, materials and Bye-laws, the trial Court granted interim injunction to that effect. Thereafter, in compliance with the said order, the first respondent Corporation had retrieved the public market from the control of the respondent 4 and 5. Consequently, the illegal structures put up by them were also removed and poor small traders like the plaintiffs in the suit and the petitioners were permitted to carry on business in the open area on daily basis on payment of sungam. The interim injunction was also made absolute after considering the counter-affidavits in I.A.Nos.314 and 497 of 2000 filed by the respondents. Despite the injunction pending suit, the Corporation constructed 144 open shops with Asbestos roof in the open area in the public market even without getting any permission from the Court.

36. In the counter-affidavit filed in the suit by the respondents 1 and 2, namely the Corporation officials, they have

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specifically stated that except the permanent shops, namely 34 shops, the respondents never allowed any person nor allotted any area to any vendors at any point of time to put a temporary shop. Since the business is in open area, a person who occupies the area first can do business on payment of sungam. Neither the Corporation nor the auctioneer allot any specific area to any small traders. It is further stated in the counter-affidavit that these respondents and the auctioneer never disturbed any small traders to do business on payment of sungam. On payment of sungam, the plaintiffs/petitioners can do business in the available area. The respondents never disturbed the petitioners/plaintiffs or any other persons to do business in the open area on payment of sungam.

37. In the other counter filed by the respondents 4 and 5 in the said suit, while opposing the interim injunction, they have stated as follows:

> "These respondents further submit that even prior to the granting of injunction order in I.A.No.314/2000 in favour of the petitioners, these respondents did not disturb the business of the petitioners at any point of time. .... In the said market, 34 permanent shops and 12 Mutton shops are there and they are running the shops by paying rents to the Coimbatore City Municipal Corporation. It is also false to state that these respondents are developing the vested interest in the Panneerselvam Market and the respondent Chelladurai along with the respondents 4,5 and 7 are not allowing the small traders including the petitioners to do their business in the vacant area of the Panneerselvam Market."

38. So, the counter-affidavit filed by the respondents in the suit on 29.3.2001 would clearly indicate that the respondents 4 and 5 were merely the permanent shop owners and they have not disturbed the small traders from conducting their business in the open space. There is no whisper either by the Corporation officials or by the respondents 4 and 5 that the original occupants were asked to go to nearby area with assurance that the newly constructed shops would be allotted to them. On the other hand, they stated in clear terms that they never disturbed the plaintiffs/petitioners who are similarly placed with that of the writ petitioners from doing their business in the open space in front of the market. To put it in nutshell, they never referred to the Sangam, its members, who are said to be in occupation in the open area in the public market for long number of years.

39. However, the present stand which has been taken by the respondents in two counter-affidavits filed before this Court in W.P.No.12892 of 2000 in May 2002 and on 10.6.2002 is quite

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contradictory to the earlier stand. The following is their statement in the counter:

> "(i) Only the members of the Sangam created by the respondents 4 and 5 alone are doing business in the open area in the Public Market and the Small Traders were never allowed to carry on business therein.
>
> (ii) Members of their Sangam are in occupation of the open area in the Public Market for the past 50 years.
>
> (iii) In December 2001, the members of the Sangam who occupied earlier were requested to shift the shops temporarily to the Corporation School ground in order to provide tin sheet roof. They were enumerated and the respondents 1 and 2 are having list of vendors and they are entitled to occupy the same."

40. The present stand of the respondents is that the respondents 4 and 5 were office-bearers of the Sangam and the members of the Sangam numbering about 400 occupied earlier and they were asked to vacate the premises on the assurance that allotment will be made in their favour after the construction is over. It is quite unfortunate on the part of the officials to take a different stand which is diametrically opposite to the stand taken before the Civil Court. Admittedly, the respondents have not produced any material to substantiate the second stand taken now which is contrary to the first stand taken in the Civil Court.

41. Even assuming that the present stand though not substantiated by any material is accepted to be true, in view of the principles laid down by the Supreme Court in A.I.R.1980 S.C.1992(supra) and 2005 Writ.L.R.30(supra) and G.O.Ms.No.147 dated 30.7.2002 issued by the Government, the 144 persons who are said to be enumerated the list of vendors are not entitled to preferential treatment for allotment of the shops in the space in the absence of the public auction and as such, the allotment made to them merely on the ground that they were the original occupants cannot be said to be valid in law.

42. Thus, from any angle, we are of the view that the order of the learned single Judge with reference to the second direction directing the authorities to give preferential treatment to 144 persons is not sustainable. Consequently, it has to be held that the process of allotment in favour of 144 persons without following the procedures contemplated under the Bye-laws and G.O. is liable to be set aside and accordingly, the same is set aside. The respondents 1 and 2 are directed to set right the wrong committed by them in passing the order dated 11.10.2004 and restore the

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public market to its original position so as to begin the process of allotment of the 144 shops by conducting public action.

43. With the above observations, the writ appeal is allowed. Consequently, the connected W.A.M.Ps.are closed. No costs.

Sd/

Asst.Registrar

/true copy/

Sub Asst.Registrar

mam

Copy to:

1.The Commissioner,
Corporation of Coimbatore,
Coimbatore.

2.The Asst. Commissioner (West Zone),
Corporation of Coimbatore,
Coimbatore - 641 002.

1 cc to MR.T.P.Manoharan, Advocate, SR. 25134
2 ccs to Mr.M.A.P.Thangavel, Advocate, SR. 25318
1 cc to MR.J.Sathya Narayana Prasad, Advocate, SR. 25206

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